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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/877,645	06/09/2001	Maria R. Cabedo-Deslierres		9326

7590 08/23/2004

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EXAMINER

BALSIS, SHAY L

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/877,645

Applicant(s)

CABEDO-DESLIERRES ET AL.

Examiner

Shay L. Balsis

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Conke (USPN 5046212) in view of Olson et al. (USPN 1487075) and further in view of Wu (USPN 5097852)

O'Conke teaches a toothbrush comprising a brush head (19) at one end and a handle (11) at the other end. The handle has a recess chamber (32) for holding and guiding a periodontal tool (39). There is a slider within the recess that has an extension tube (31) attached to the terminal end. There is button (37) that engages a slot (33) in the outer wall of the recess chamber. The button is keyed to the slider through the slots. O'Conke teaches all the essential elements of the claimed invention however fails to teach two periodontal tools housed in the handle. Olson teaches a tooth cleaner comprising a brush on one end and two periodontal cleaning tools on the other end. The tools are housed in two separate recesses in the handle, however they pivot rather than slide out of the recess. It would have been obvious to one ordinary skill in the art at the time the invention was made to have two periodontal tools housed in the handle on O'Conke's toothbrush since cleaning elements of various characters facilitate the cleaning of different portions of the teeth to obtain a more effective cleaning as taught by Olson. While Olson fails to teach that the recesses for the tools are cylindrical it would have been obvious to change the shape of the recesses from rectangular to cylindrical since changing the shape would not change the actual function of the toothbrush. Changing the shape is an

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aesthetic modification that has been considered to be within the level of ordinary skill in the art to follow. *In re Seid*, 161 F.2d 229, 231, 73 USPQ 431, 433 (CCPA 1947).

O'Conke teaches that the tool, slider and extension tube are integrally formed. Applicant claims that the tool, slider and extension tube are not integrally formed and are separate pieces. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make O'Conke's tool, slider and extension tube from separate pieces since making part separable is a modification that has been considered to be within the level of ordinary skill in the art to follow. *In re Dulberg*, 289, F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961).

O'Conke also fails to teach a cap at the terminal end of the handle. Wu teaches a toothbrush comprising brush head at one end and a periodontal tool at the other. The tool is on a slider so that is can be retracted and extended from the handle. There is a cover (4) to protect the tool. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a cover/cap to inhibit any contamination that could come in contact with the periodontal tools. Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the cover hinged to the handle so that it will not get lost or misplaced. Making the cover integrally hinged to the handle is a modification that has been considered to be within the level or ordinary skill in the art to follow. *In re Larson*, 340 F.2d 965, 967, 144 USPQ 347, 349 (CCPA 1965).

O'Conke in view of Olson et al and further in view of Wu teaches all the essential elements of the claimed invention as specified in claim 1.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wu (USPN 5097852 in view of Olson et al. (USPN 1487075).

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Wu teaches a toothbrush comprising a brush head (11) at one end and a handle at the other end. The handle has a recess chamber (21) for holding and guiding a periodontal tool (3). There is a slider within the recess that has an extension tube (31) attached to the terminal end. There is button (35) that engages a slot (23) in the outer wall of the recess chamber. The button is keyed to the slider through the slots. There is also a cover (4) for covering the periodontal tool when not in use. Wu teaches all the essential elements of the claimed invention however fails to teach two periodontal tools housed in the handle. Olson teaches a tooth cleaner comprising a brush on one end and two periodontal cleaning tools on the other end. The tools are housed in two separate recesses in the handle, however they pivot rather than slide out of the recess. It would have been obvious to one ordinary skill in the art at the time the invention was made to have two periodontal tools housed in the handle on Wu's toothbrush since cleaning elements of various characters facilitate the cleaning of different portions of the teeth to obtain a more effective cleaning as taught by Olson.

Wu does not teach that the cover is hinged to the handle. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the cover hinged to the handle so that it will not get lost or misplaced. Making the cover integrally hinged to the handle is a modification that has been considered to be within the level of ordinary skill in the art to follow. *In re Larson*, 340 F.2d 965, 967, 144 USPQ 347, 349 (CCPA 1965).

Wu in view of Olson et al. teaches all the essential elements of the claimed invention as specified in claim 1.

### ***Response to Arguments***

Applicant's arguments filed 5/12/04 have been fully considered but they are not persuasive. Applicant has provided arguments for why the references are not obvious however the applicant has remarked on the references separately. The references were not used to reject

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the claim separately. The references were used in combination with each other to provide a solid rejection. A primary reference was used and elements that were missing from the primary reference were fulfilled by the use of secondary references, stating that it would be obvious to combine the primary reference with the secondary references to achieve the claimed invention. With that being the case, the combination of O'Conke, Olson and Wu, provide a rejection that meets all the limitations of the claim and therefore the rejection is maintained.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

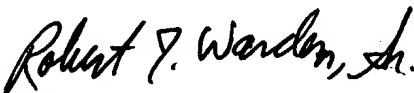
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L Balsis whose telephone number is 571-272-1268. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Slb  
8/10/04

  
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